

**HONORABLE MARILYN L. HUFF
U.S. DISTRICT JUDGE
CIVIL PRETRIAL & TRIAL PROCEDURES**

Please Note: The Court provides this information for general guidance to counsel. However, the Court may vary these procedures as appropriate in any case.

INITIAL STATUS CONFERENCE:

Pursuant to Civil Local Rule 16.1(c), within 45 days of the filing of an answer, counsel and the parties shall appear before the magistrate judge supervising discovery for an early neutral evaluation (“ENE”) conference. This appearance shall be made with authority to discuss and enter into settlement.

INITIAL SCHEDULING ORDER:

An initial scheduling order will be issued by the magistrate judge assigned to the case. The scheduling order sets the following: (1) date of discovery planning meeting pursuant to Rule 26(f) of the Federal Rules of Civil Procedure; (2) date to lodge discovery plan with the Court; (3) date for initial disclosures under Rule 26(a)(1)(A)-(D); and (4) date of the Case Management Conference.

CASE MANAGEMENT CONFERENCE:

Counsel and parties will meet with the magistrate judge for a case management conference. Prior to the case management conference all counsel will discuss discovery issues and endeavor to resolve any disputes. Procedures for the case management conference are set forth in Local Rule 16.1(d).

TEMPORARY RESTRAINING ORDERS/PRELIMINARY INJUNCTIONS

Temporary restraining orders and preliminary injunctions will issue pursuant to Rule 65 of the Federal Rules of Civil Procedure. While temporary restraining orders may be heard ex parte, the Court may exercise its discretion and have the parties serve the other side before proceeding. Alternatively, the Court may issue a limited temporary restraining order to preserve evidence pending further briefing on the issue. The Court will generally give notice by telephone when the hearing will occur.

DISCOVERY & PROTECTIVE ORDERS

All motions to compel discovery are referred to the magistrate judge assigned to the case. The court will not entertain motions pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure unless counsel have previously met and conferred concerning all disputed issues. Civil Local Rule

26.1(a). Protective orders shall only issue for good cause shown, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, and may be modified by the Court at anytime.

PRETRIAL MOTION PRACTICE:

Pursuant to Civil Local Rule 7.1(b)(2), all dates for motion hearings must be obtained by calling the law clerk. Briefing schedules are as set forth in the Local Rules. There are no additional filing deadlines other than those set forth in the Local Rules, unless the Court sets a specific briefing schedule in the case. If the Court requires additional briefing, it will inform the parties. The Court reserves the right to hear motions on the papers and without oral argument, in accordance with Civil Local Rule 7.1(d)(1).

At the Court's discretion, telephonic argument is permitted, but arrangements need to be made in advance of the hearing. Civil Local Rule 7.1(d)(3).

PRETRIAL CONFERENCE:

Pursuant to Civil Local Rule 16.1(f)(7), the Court requires that the plaintiff file the pretrial order no less than five days before the pretrial conference. The pretrial order must include all elements set out in Civil Local Rule 16.1(f)(7)(c) and any other issues relevant to the trial. The Court expects both sides to cooperate to complete the pretrial order.

A trial date will typically be set at the pretrial conference. In civil cases, the Court will generally set reasonable time limits for the trial in consultation with counsel at the pretrial conference.

MOTIONS IN LIMINE:

At the pretrial conference, the Court will set a date for motions in limine and will frequently set a briefing schedule for motions in limine. If no separate briefing schedule is ordered by the Court, the parties should follow the 28-day motion filing schedule as set forth in the Local Rules to determine the filing deadline for the motions in limine, opposition, and reply.

JURY INSTRUCTIONS:

The parties should each submit proposed jury instructions to the Court on the first day of trial, unless otherwise ordered by the Court. Supplemental instructions should be filed and served as soon as the need for them becomes apparent.

Counsel must cite the authority supporting any proposed instructions. Any proposed modifications of instructions from statutory authority or the Ninth Circuit Models must state specifically the modification and the authority supporting the modification.

All proposed instructions submitted by either party that the Court does not adopt will be deemed

opposed.

Prior to the case being submitted to the jury, the Court will generally provide each party with the jury instructions the Court intends to use. It is each party's responsibility to carefully review these jury instructions and make suggestions to the Court if modifications appear necessary.

The jury instructions conference is included in the Court's overall time limit for the trial.

TRIAL BRIEFS:

Pursuant to the Local Rule 16.1(f)(10), the parties may, no later than 7 days prior to the date of trial: (1) serve and file briefs on all significant disputed issues of law, including foreseeable procedural and evidentiary issues and (2) serve and file proposed voir dire questions and forms of verdict.

JURY SELECTION:

The Court will consider a jury questionnaire if requested in a timely fashion, not less than six weeks before trial, and approved by the Court.

The courtroom deputy will provide counsel with a list of the jury panel in random order at the start of the voir dire.

The Court will conduct the initial jury voir dire. On a case by case basis, the Court may consider requests for follow-up voir dire conducted by the attorneys, if specific questions are presented for approval or a jury questionnaire is requested more than a month in advance of the trial.

The blind strike system regarding the exercise of peremptory challenges will generally be utilized. Generally, challenges for cause/Batson issues will occur at sidebar, unless the Court requests otherwise.

TRIAL SCHEDULE:

In civil trials, it is the practice of the Court to set a reasonable time limit for the entire trial. This time limit reflects the estimates of counsel but is based on the Court's independent assessment of the time necessary to complete the trial. Such a time limit is all-inclusive; it includes jury selection, opening statements, argument, and any other matters that occur over the course of the trial. This time limit is subject to exception for good cause shown.

The courtroom deputy clerk will keep track of time limits and will inform the parties periodically of the time remaining for trial, generally at the beginning of each trial day.

Trial generally proceeds from 9:00 a.m. to 4:30 p.m., unless the Court schedules otherwise. Jury deliberations generally proceed from 9:00 a.m. to 4:30 p.m. The Court will notify the parties of deviations from this schedule.

OPENING STATEMENTS AND SUMMATION:

Opening statements shall not include legal arguments. Opening statements shall state only the facts that each party believes will be presented at trial.

Counsel should rise when addressing the Court, and in jury cases when the jury enters or leaves the courtroom.

The Court uses a sound recording system for the record. Therefore, whenever counsel is speaking, counsel must use a microphone so that the Court's electronic recording system will contain a complete record. If counsel moves away from the lectern, counsel must speak into a microphone.

The court expects counsel to adhere to reasonable time estimates for opening and closing addresses to the jury.

EXAMINATION OF WITNESSES

Where a party has more than one lawyer, only one lawyer may conduct the direct or cross-examination of a given witness and only one lawyer per witness may make objections.

In jury cases, counsel must avoid addressing any juror by name.

Counsel should not by facial expression, nodding or other conduct exhibit any opinion, adverse or favorable, concerning any testimony being given by a witness. Counsel should admonish counsel's own clients and witnesses to avoid such conduct.

Counsel must not address or refer to witnesses or parties by first name alone, except for young witnesses under age 14.

OBJECTIONS:

When objecting, counsel must state the objection and state only that counsel objects and the legal ground of objection. Speaking objections are not permitted. If the Court needs additional information to rule on the objection, the Court will ask for further argument. Where a party has more than one lawyer, only one may object during the direct or cross-examination of a given witness. The Court generally will not interrupt the jury time for sidebar conferences.

BENCH CONFERENCES:

During a jury trial, the Court wishes to maximize the jury's time and therefore strongly discourages sidebar conferences while the jury is in the jury box. If counsel wishes to speak to the Court outside the jury's presence, counsel may request to do so at the start of the recess or at the end of the day. The Court will generally not grant requests to see the Court outside the presence of the jury when the court is about to begin the day of trial or reconvene following a recess. These matters can

generally await the next recess.

TRIAL PROCEDURE:

The Court expects promptness from counsel and witnesses. It is counsel's duty to tell the Court on the first day of trial of any commitments in any other court on a subsequent day that may result in absence or late arrival. Due to the Court's criminal schedule, counsel and witnesses are expected to be present for trial except for emergencies such as illness.

Lawyers must make every effort to have their witnesses available all day on the day they are to testify. The Court attempts to accommodate witnesses' schedules and may permit counsel to put them on out of sequence if warranted by the circumstances. Counsel must anticipate any such possibility and discuss it with opposing counsel and the court. Counsel must promptly alert the Court to any scheduling problems involving witnesses.

Stipulations agreed upon during the trial need not be signed by the Court. However, counsel should meet and confer outside the presence of the jury before presenting a stipulation to the Court.

The Court prefers to have motions filed before trial, including evidentiary questions. Many issues can be anticipated before trial. However, the Court reserves the right to issues ruling on the motion after trial has begun.

If any counsel raises during the trial a question of law or evidence the could not have been raised before trial and may require research and/or briefing, counsel should give the Court advance notice if possible.

EXHIBITS:

Each counsel should prepare a list of exhibits and give it to the courtroom deputy clerk on the first day of trial. All exhibits must be premarked on the first day of trial. Exhibit stickers may be obtained from the courtroom deputy clerk or the Intake Window of the Clerk's Office, in advance of the start of trial.

Each counsel must keep counsel's own list of exhibits and should keep track when each has been admitted into evidence. The deputy clerk will have the official exhibit list. Once an exhibit is admitted it is the property of the Court and must remain in the courtroom, unless otherwise ordered by the Court.

Counsel must show each other all exhibits, except for those intended to impeach witnesses. Exhibits must be admitted in evidence before counsel may show them to the jury. When referring to an exhibit, counsel should refer to its exhibit number whenever possible.

If a demonstrative exhibit is being used and counsel's view is obstructed, counsel may relocate for better viewing without requesting permission from the Court.

Pursuant to General Order 340, all exhibits will be returned to the party who produced them at the conclusion of the trial.

DEPOSITIONS:

In using depositions of an adverse party for impeachment, either one of the following procedure may be adopted:

- (1) If counsel wishes to read the question and answers as alleged impeachment and ask the witness no further questions on the subject, counsel may read the relevant portions of the deposition into the record, stating the page and line where the reading began and the page and line where the reading ended; or
- (2) If counsel wishes to ask the witness further questions on the subject matter, the deposition is placed in front of the witness and the witness is told to read silently the pages and lines involved. Then counsel may either ask the witness further questions on the matter and thereafter read the quotations or read the quotations and thereafter ask the further questions.

Where a witness is absent and the witness's testimony is offered by deposition, please observe the following procedures:

- (1) In jury cases, a reader should occupy the witness chair and read the testimony of the witness while the examining lawyer asks the questions;
- (2) In non-jury cases, the lawyer should present the relevant portions of the deposition to the Court for review.

JURY:

Counsel must not speak or interact with any jurors in the proceeding until after a verdict has been rendered. Counsel must instruct witnesses, clients, and observers not to have any interaction with the jurors.

During deliberations, counsel should give the courtroom deputy clerk a phone number where they can be reached.

GENERAL DECORUM:

All persons, whether observers, witnesses, lawyers, or clients, must maintain proper decorum while in court.

Pursuant to Civil Local Rule 83.4, lawyers must behave in a professional manner. Specifically lawyers must:

- (a) be courteous and civil in all communications, oral and written;
- (b) be a vigorous and zealous advocate on behalf of a client without acting in a manner detrimental to the proper functioning of the judicial system;
- (c) attempt to resolve litigation consistent with his or her clients's interests;
- (d) attempt to informally resolve disputes with opposing counsel;

- (e) agree to reasonable scheduling changes, requests for extensions of time and waivers of procedural formalities, if the legitimate interests of a client will not be adversely affected;
- (f) communicate with opposing counsel in an attempt to establish a discovery plan and voluntary exchange of information; and
- (g) when possible, confer with opposing counsel before scheduling or rescheduling hearings, depositions, and meetings and notify all parties and the court, as early as possible when hearings or depositions must be canceled.

Counsel shall meet and confer to resolve any problems that might affect compliance with the above rules and instructions.